**5339 AMH GRAH H2809.1 - NOT FOR FLOOR USE**

**SB 5339** - H AMD **644**

By Representative Graham

**NOT CONSIDERED 12/23/2019**

On page 1, line 11, after "in" strike all material through "of" and insert "subsections (2) and (3) of"

On page 2, beginning on line 32, after "~~eighteenth~~" strike "~~birthday.~~

~~(3)~~))" and insert "~~birthday~~)) If a person convicted of aggravated murder does not object to a sentence of death and waives his or her rights to appeal pursuant to a special sentencing hearing under RCW 10.95.050, then the sentence shall be death.

(3)"

On page 4, after line 37, insert the following:

"**Sec.**  RCW 10.95.040 and 1981 c 138 s 4 are each amended to read as follows:

(1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing ((~~proceeding~~)) hearing to determine whether or not the death penalty should be imposed ((~~when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency~~)).

(2) The notice of special sentencing ((~~proceeding~~)) hearing shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing ((~~proceeding~~)) hearing, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing ((~~proceeding~~)) hearing is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty.

**Sec.**  RCW 10.95.050 and 1981 c 138 s 5 are each amended to read as follows:

(1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing ((~~proceeding~~)) hearing shall be held if a notice of special sentencing ((~~proceeding~~)) hearing was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing ((~~proceeding~~)) hearing be held.

(2) ((~~A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.~~

~~(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.~~

~~(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory challenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges~~)) (a) At the special sentencing hearing, the court shall afford the opportunity for the defendant to object to a death sentence. If he or she objects or does not waive his or her right to appeal the sentence, then the court shall sentence the defendant to life imprisonment without the possibility of release or parole under RCW 10.95.030.

(b) If the defendant does not object to the death sentence and he or she voluntarily waives his or her right to appeal the sentence, then the court shall sentence the defendant to death.

(3) In a special sentencing hearing under this section, the court shall:

(a) Inform the defendant of his or her rights and of the consequences of the hearing; and

(b) Prior to accepting a waiver under subsection (2)(b) of this section, find the defendant is fully aware of his or her rights and the consequences of his or her decisions.

**Sec.**  RCW 10.95.160 and 1990 c 263 s 1 are each amended to read as follows:

(1) If a death sentence is ((~~affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2)~~)) imposed pursuant to a special sentencing hearing under RCW 10.95.050, a death warrant shall forthwith be issued by the clerk of the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington.

(2) If the date set for execution under subsection (1) of this section is stayed by a court of competent jurisdiction for any reason, the new execution date is automatically set at thirty judicial days after the entry of an order of termination or vacation of the stay by such court unless the court invalidates the conviction, sentence, or remands for further judicial proceedings. The presence of the inmate under sentence of death shall not be required for the court to vacate or terminate the stay according to this section."

Renumber the remaining section consecutively, correct any internal references accordingly, and correct the title.

On page 5, beginning on line 1, strike all of subsections (1) and (2)

Renumber the remaining subsections consecutively and correct the title.

On page 5, beginning on line 14, strike all of subsection (6)

Renumber the remaining subsections consecutively and correct the title.

On page 5, line 32, after "14;" insert "and"

On page 5, line 34, after "15" strike ";" and insert "."

Beginning on page 5, line 35, strike all of subsections (13) through (18)

Correct the title.

EFFECT: (1) Requires the court to sentence a defendant convicted of aggravated first degree murder to death if: (a) The prosecuting attorney files a notice of a special sentencing hearing; (b) the defendant does not object to the death sentence; (c) the defendant waives his or her rights to appeal the sentence; and (d) the court finds the defendant is fully aware of his or her rights and the consequences of his or her decision.

(2) Restores the statutory procedures for issuing a death warrant and carrying out a death sentence.